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**FILED**

**MAY 20 1938**

**CHARLES ELMORE GROPLEY**  
CLERK

**IN THE**  
**Supreme Court of the United States**

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**October Term, 1937.**

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**No. 21 , Original.**

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**In the Matter of the Petition of the National Labor Relations Board for a Writ of Prohibition and for a Writ of Mandamus Against the Honorable Joseph Buffington, the Honorable J. Warren Davis, and the Honorable J. Whitaker Thompson, Circuit Judges of the Third Judicial Circuit, and the Other Judges and Officers of the United States Circuit Court of Appeals for the Third Circuit:**

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**Return to the Rule to Show Cause.**

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IN THE  
Supreme Court of the United States.

OCTOBER TERM, 1937.

No. , ORIGINAL.

IN THE MATTER OF THE PETITION OF THE NATIONAL LABOR  
RELATIONS BOARD FOR A WRIT OF PROHIBITION AND FOR A  
WRIT OF MANDAMUS AGAINST THE HONORABLE JOSEPH  
BUFFINGTON, THE HONORABLE J. WARREN DAVIS, AND  
THE HONORABLE J. WHITAKER THOMPSON, CIRCUIT  
JUDGES OF THE THIRD JUDICIAL CIRCUIT, AND THE OTHER  
JUDGES AND OFFICERS OF THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE THIRD CIRCUIT.

**RETURN TO THE RULE TO SHOW CAUSE.**

The respondents, submitting themselves to the jurisdiction of this Court, make return as follows to the rule to show cause heretofore entered against them.

1. They admit the averments of the 1st, 2d, 7th, 8th and 9th paragraphs of the petition and so much of the 6th paragraph as relates to the course of the hearing therein referred to.

2. They have no such knowledge as enables them either to admit or deny the residue of the averments of the 6th paragraph or any of the averments of the 3d, 4th and 5th paragraphs.

3. As to those portions of the 10th, 11th and 12th paragraphs which purport to interpret the applicable sections of the Act of July 5, 1935, the respondents submit themselves to the judgment of this Court.

4. They admit the making on May 3, 1938, of the order which, inter alia, required the petitioner to file in the Circuit Court of Appeals for the Third Circuit a certified transcript of the record of the proceeding before the Board. They further admit that the copy of said order annexed to the petition is a true copy and that a request for a stay of the order was refused by this Court.

5. The respondents show to the Court that sub-section (f) of section 10 of the Act of July 5, 1935, after providing for the filing in a Circuit Court of Appeals of a petition by a person aggrieved by any final order of the Board, proceeds as follows:

"A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board;"

The aggrieved corporation, by filing and serving its petition for relief and by requesting the Board to file, or to

deliver for filing, a certified transcript of its proceedings, complied with the jurisdictional requirement of the Act so far as it was within its power so to do. The respondents believe and so aver that it then and there became the statutory duty of the Board forthwith to file said transcript; and they show to this Court that in recognition of such a duty the Board, in acknowledging service of the original petition, undertook and promised "to get up the record as promptly as possible for certification to the Court". The respondents believe and so aver that the jurisdiction of the Circuit Court of Appeals attached upon the making of service as specified in subsection (f) and that the jurisdiction of the Court could not be defeated by the failure of the Board to perform its statutory duty.

6. The respondents show to the Court that if after making a final order against an aggrieved corporation the Board were permitted to delay indefinitely the filing of the transcript of its proceedings, the mere pendency of the order, though unenforced, might well be destructive of the morale of employees and the credit of their employer. Because the respondents were unwilling to impute to the Congress an intent to cause such potential injustice, they as judges of the Circuit Court of Appeals for the Third Circuit, made the protective order herein complained of.

7. The respondents further suggest to the Court that it is at least uncertain whether subsection (d) of section 10 is applicable in any case except that in which the Board is the petitioner for an enforcement order; and they show to the Court that, as between two possible interpretations of the statute, they have adopted the one most favorable to the liberty of the citizen.

8. Recognizing the debatable character of the question presented on this record, the respondents submit themselves to the judgment of this Court as to whether or not they had jurisdiction to enter the order complained of and record their readiness to vacate the same if in the opinion of this Court jurisdiction of the cause was lacking.

Respectfully submitted,

JOSEPH BUFFINGTON,

J. WARREN DAVIS,

J. WHITAKER THOMPSON,  
*Respondents.*

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